

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY VINCENT LAFORET,

Defendant and Appellant.

C081265

(Super. Ct. Nos. STKCRFE20156228,
SF131302A)

Appointed counsel for defendant Anthony Vincent Laforet has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We modify the judgment to include imposition of certain mandatory fines and fees, and affirm the judgment as modified.¹

¹ Because the law is clear, we modify the judgment without further briefing in the interests of judicial economy. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153–1157; *People v. Smith* (2001) 24 Cal.4th 849, 851–854; *People v. Turner* (2002) 96 Cal.App.4th 1409, 1413–1416.) Any party aggrieved may petition for rehearing.

BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

Defendant pleaded guilty to felony evading a peace officer and taking a vehicle without consent, with a prior conviction for vehicle theft. (Veh. Code, §§ 2800.2, subd. (a), 10851, subd. (a); Pen. Code,² § 666.5.) Per the parties' agreement, the trial court sentenced defendant to serve the upper term of four years on the vehicle theft charge and a concurrent lower term of 16 months on the felony evading a peace officer charge, with four days' presentence custody credit.³ The trial court also imposed a \$300 restitution fine (§ 1202.4, subd. (b)) and a corresponding parole revocation fine suspended unless parole is revoked (§ 1202.45). Defendant filed two notices of appeal and two requests for a certificate of probable cause. The trial court denied defendant's requests for a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

² Undesignated statutory references are to the Penal Code.

³ The original abstract of judgment, filed November 16, 2015, erroneously reflected a two-year sentence on the felony evading charge. On April 6, 2016, the trial court on its own motion amended the felony abstract of judgment to reflect the court's oral pronouncement of a 16-month sentence on this charge. The trial court forwarded a copy of the amended abstract to the Department of Corrections and Rehabilitation. Since this error has already been corrected, we need not address it here.

DISCUSSION

Based on our review of the record, we conclude the judgment must be modified to include imposition of certain mandatory fines and fees, and the abstract of judgment must be further amended. The oral imposition of sentence constitutes the judgment in an action, and the minutes and abstract cannot add anything substantive to the oral pronouncement. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385, 387–389.) The oral pronouncement controls if there is a discrepancy, and the court clerk lacks the authority to add fines or fees not imposed by the trial court. (*Zackery*, at pp. 385-390.) When a trial court fails to impose a statutorily mandated fine or fee, the sentence is unauthorized, and the appellate court may correct the error, even if the People failed to bring it to the trial court’s attention. (*People v. Smith, supra*, 24 Cal.4th at pp. 852–853; *People v. Scott* (1994) 9 Cal.4th 331, 354.)

The amended abstract of judgment includes certain mandatory fees that were not orally imposed by the trial court: the mandatory \$80 court operations fee (§ 1465.8), \$60 conviction assessment (Gov. Code, § 70373), and a \$30 “surcharge” that we assume was a collection fee imposed pursuant to section 1202.4, subdivision (*l*). The judgment must be modified to include these mandatory fees. In addition, the abstract of judgment must be amended to reflect the statutory basis for the \$30 collection fee. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

DISPOSITION

The judgment is modified to impose an \$80 court operations fee (Pen. Code, § 1465.8), a \$60 conviction assessment (Gov. Code, § 70373), and a \$30 collection fee (Pen. Code, § 1202.4, subd. (*l*)). The trial court is directed to prepare an abstract of judgment further amended to reflect the statutory basis for the Penal Code section 1202.4, subdivision (*l*), collection fee and forward a certified copy of this

amended abstract to the Department of Corrections and Rehabilitation. As modified,
the judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
BUTZ, Acting P. J.

_____/s/
RENNER, J.